

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

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JESSE ORTIZ,

Plaintiff,

v.

THE HERSHEY COMPANY,

Defendant.

Case No.: 2:11-cv-03123 (STA)

ECF

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**JOINT MOTION TO CONTINUE THE TRIAL AND PRE-TRIAL
SETTINGS PENDING DISPOSITIVE MOTION RESOLUTION, OR,
ALTERNATIVELY, TO EXTEND SAID SETTINGS BY SIXTY (60) DAYS
AND INCORPORATED MEMORANDUM IN SUPPORT**

COME NOW jointly, Defendant The Hershey Company (“Hershey”) and Plaintiff Jesse R. Ortiz (“Ortiz”) (collectively, the “Parties”), by and through their respective undersigned counsel, and respectfully submit this Joint Motion To Continue The Trial And Pre-Trial Settings Pending Dispositive Motion Resolution, Or, Alternatively, To Extend Said Settings By Sixty (60) Days and Incorporated Memorandum in Support. In support of their motion, the Parties provide as follows:

1. By Scheduling Order dated July 30, 2012, the Court set the dates for completion of all discovery and the filing of dispositive motions as March 21, 2013, and May 6, 2013, respectively. (Dkt. No. 20)

2. By Notice of Setting dated December 12, 2012, the Court set the following trial and pre-trial dates: trial (September 16, 2013); pre-trial conference (August 26, 2013); pre-trial order submission (by August 15, 2013). (Dkt. No. 26)

3. By motion dated March 20, 2013, Plaintiff requested an extension of the March 20, 2013 discovery completion date (Dkt. No. 38), a motion to which Defendant had consented based on the understanding that Plaintiff's motion would include a request for a corresponding extension of the dispositive motion deadlines and the trial and pre-trial setting dates.

4. By Order dated March 22, 2013, the Court granted Plaintiff's motion to extend the discovery completion date to May 21, 2013. The Court also extended the date for dispositive motion filing to June 20, 2013, but it did not correspondingly extend the trial or pre-trial setting dates, which remain as stated in paragraph 2 above. (Dkt. No. 39)

5. The parties completed all discovery by May 21, 2013, and Defendant timely filed its summary judgment motion and Rule 56.1 Statement on June 20, 2013 (Dkt. No. 50).

6. Pursuant to Local Rule 56.1, Plaintiff's response thereto was due on July 18, 2013.

7. On July 18, 2013, Plaintiff's counsel contacted Defendant's counsel to request an extension, to July 23, 2013, to file said response, to which Defendant consented on condition that any motion include a request for a corresponding extension for Defendant's reply.

8. On July 19, 2013, Plaintiff filed his extension motion, in accord with that agreed to between the parties' counsel. (Dkt. No. 55.) The Court has not yet ruled on said motion.

9. On July 23, 2013, Plaintiff filed an "Amended Motion for an Extension of Time to File," seeking an additional two days (to July 25, 2013), to file his summary judgment response, and a corresponding extension to the due date for Defendant's reply (to August 8, 2013). (Dkt.

No. 56) Defendant neither consented to nor objected to said motion, but it asserts no objection thereto. The Court has not yet ruled on said motion.

10. Plaintiff filed his summary judgment response on July 25, 2013. (Dkt. Nos. 57-59.)

11. On July 26 and July 29, 2013, Plaintiff's counsel conferred with Defendant's counsel to seek consent to file an amended summary judgment response in order to correct non-substantive errors in his July 25, 2013 submissions and to upload exhibits that had not properly uploaded on July 25, 2013. Defendant neither consented nor objected thereto.

12. On July 29, 2013, Plaintiff filed (1) a motion to accept late filed corrected response to defendant's motion for summary judgment (Dkt. No. 60), and (2) proposed corrected responsive submissions (Dkt. Nos. 61-66).

13. On August 8, 2013, Defendant timely filed its Reply to Plaintiff's July 25, 2013 summary judgment response. (Dkt. No. 67)

14. On August 9, 2013, Plaintiff moved to strike Defendant's Reply for allegedly exceeding the page limit provided for by Local Rule 56.1 (Dkt. No. 68), and on August 12, 2013, the Court denied Plaintiff's Motion. (Dkt. No. 69)

15. Defendant's summary judgment motion has now been fully briefed to the Court.

16. Based on the currently governing schedule, the parties are due to file their Joint Pre-trial Order three days from today, on August 15, 2013.

17. The parties jointly desire to have the Court rule on Defendant's motion for summary judgment before incurring the time and cost associated with preparing a Joint Pre-trial Order, complying with other upcoming pre-trial deadlines, and preparing for a jury trial in this matter, which is currently scheduled for September 16, 2013.

18. Based on the Court's prior grant of Plaintiff's motion for an extension of the discovery date and corresponding extension of the dispositive motion deadline, and on Plaintiff's request for an extension to file his summary judgment response, the time period between submission of summary judgment briefing and the upcoming pre-trial and trial deadlines is more than sixty (60) days shorter than originally contemplated.

19. Continuing the trial and pre-trial setting dates is in the best interest of judicial economy and may result in the parties avoiding the unnecessary cost and expense of preparing for trial if this matter is, in fact, resolved on the pending dispositive summary judgment motion.

WHEREFORE, the Parties respectfully move this Court to grant their Joint Motion To Continue The Trial And Pre-Trial Settings Pending Dispositive Motion Resolution, Or, Alternatively, To Extend Said Settings By Sixty (60) Days.

Dated: August 12, 2013

Respectfully submitted,

By: Joann Coston-Holloway

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CERTIFICATE OF CONSULTATION

I hereby certify that on August 6, 2013, Counsel for Defendant conferred with Counsel for Plaintiff, Linda K. Garner, by telephone concerning the filing of the foregoing joint motion. Ms. Garner agreed to Defendant's filing said motion.

s/ Edna D. Guerrasio

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been electronically filed and served upon Plaintiff's counsel, Linda K. Garner, using the CM/ECF system, this 12th day of August, 2013.

s/ Joann Coston-Holloway